

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

RONALD MELVYN LEVY, M.D.
6325 Sheridan Drive
Williamsville, New York 14221

Physician and Surgeon Certificate
No. G22600

Physician Assistant Supervisor
License No. SA14698,

Respondent.

No. 16-94-38976


OAH No. N-9504092

DECISION

The attached Proposed Decision of the Administrative Law
Judge is hereby adopted by the Medical Board of California as its
Decision in the above-entitled matter.

This Decision shall become effective on May 28, 1996.

IT IS SO ORDERED April 26, 1996.



IRA LUBELL, M.D.
Chair
Division of Medical Quality

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	No. 16-94-38976
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RONALD MELVYN LEVY, M.D.)	OAH No. N-9504092
6325 Sheridan Drive)	
Williamsville, New York 14221)	
)	
Physician and Surgeon Certificate)	
No. G22600)	
)	
Physician Assistant Supervisor)	
License No. SA14698,)	
)	
Respondent.)	
<hr/>		

PROPOSED DECISION

The matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, Medical Quality Hearing Panel, Office of Administrative Hearings, Sacramento, California, on March 4, 1996.

Complainant was represented by Daniel J. Turner, Deputy Attorney General, Health Quality Enforcement Section, California Department of Justice.

Respondent Ronald Melvyn Levy, M.D. (hereinafter "Respondent"), appeared and was represented by Jeffrey A. Lazroe, Esq.¹

Evidence was received and the matter deemed submitted on March 4, 1996.

FINDINGS OF FACT

Procedural Findings

I

Complainant, Dixon Arnett, as Executive Director of the Medical Board of California (hereinafter "the Board"), brought the Accusation on December 19, 1994, in his official capacity.

¹Mr. Lazroe is admitted to practice in the State of New York.

II

On July 12, 1972, Respondent was issued Physician and Surgeon Certificate No. G22600 by the Board.

III

Following issuance of his certificate as set forth in Finding No. II, Respondent was issued Physician Assistant Supervisor License No. SA14698 by the Physician Assistant Examining Committee.

IV

All jurisdictional requirements have been met.

Factual Findings

V

At all times relevant, Respondent was licensed to practice medicine (No. 103809) by the New York State Education Department. On January 7, 1994, said license was censured, reprimanded and fined in the sum of \$30,000 by the Administrative Review Board for Professional Medical Conduct, Department of Health, State of New York.

VI

The facts and circumstances giving rise to the discipline referenced in Finding No. V are that:

- A. On January 18, 1990, Respondent overbilled Patients A and B for 21 hours of therapeutic services.
- B. On January 18, 1992, Respondent, while driving his car, with Patient C, 17 years old, as the only passenger therein, from Canada to the United States through the U.S. Customs Services facilities at the Rainbow Bridge near Buffalo, New York, was stopped and searched by U.S. Customs officials. During the stop, Respondent falsely and variously told Customs Officers:
 - 1. Patient C and he were:
 - (a) "just friends,"
 - (b) Patient C was his former secretary,
 - (c) Patient C was a former patient who worked for him "off the books," and

- (d) Patient C was his current patient for whom he was providing medications.
2. Respondent made a written and oral declaration that he had no drugs or weapons in his possession, when in fact he was found by Customs Officers to have in his possession a quantity of Darvon, Xanax, Valium, and a loaded .25 caliber pistol.
- C. Respondent, lacking a termination notice in a patient file, failed to properly maintain records.

Circumstances in Mitigation

VII

Respondent, since the imposition of discipline (Finding No. V) and notwithstanding a personal lack of interest for managing finances, has modified his office procedures so that his wife, a registered nurse, more actively oversees the administrative aspects of his office.

VIII

Respondent has been licensed as a physician and surgeon for nearly 25 years and prior to the discipline referenced in Finding No. V, had never been the subject of any disciplinary proceeding.

IX

Respondent, 54, accepts responsibility for his conduct as referenced in Finding Nos. V - VI.

Circumstances in Aggravation

X

Respondent, despite some payments towards the fine referenced in Finding No. V and as a consequence of financial difficulties, has not paid the fine in full.

XI

Respondent, despite acknowledgement of his responsibility for his conduct as referenced in Finding Nos. V - VI and X, has engaged in repeated acts of deception (Finding Nos. VI.A - VI.B) and conduct of moral turpitude.

XII

Despite Respondent's change in office procedures relative to billing (Finding No. VII), he undertakes no active or supervisory role in the billing procedures of his office.

XIII

Respondent, despite acknowledgement of his responsibility for his conduct as referenced in Finding No. XI, lacks any insight into the import of his conduct as set forth in Finding Nos. VI.A and VI.B to his licensure as a physician and surgeon (Finding No. II).

XIV

Respondent is not rehabilitated (Finding No. X - XIII).

Costs Findings

XV

No evidence of costs and fees incurred in the investigation and prosecution of this matter was presented.

DETERMINATION OF ISSUES

I

Business and Professions Code "section 2305 requires only that the California Board determine that disciplinary action by another state as to a license to practice medicine issued by that other state has occurred." (Marek v. Board of Podiatric Medicine (1993) 16 Cal.App.4th 1089, 1093.)

Accordingly, cause exists to revoke or suspend the certificate of Respondent as a physician and surgeon for discipline imposed by another state pursuant to the provisions of Business and Professions Code sections 2234 and 2305 as set forth in Finding Nos. II and V - VI.

II

Cause exists to revoke or suspend the approval of Respondent as a physician assistant supervisor for discipline imposed by another state pursuant to the provisions of Business and Professions Code section 3527, in conjunction with sections 2234 and 2305, as set forth in Finding Nos. III and V - VI.

III

Cause does not exist to direct Respondent to pay costs in the investigation, prosecution or enforcement of this matter pursuant to Business and Professions Code section 125.3 as set forth in Finding No. XV.

IV

The objective of this proceeding is to protect the public, the medical profession, maintain professional integrity, its high standards, and preserve public confidence in the medical profession. These proceedings are not for the primary purpose of punishing an individual. (Camacho v. Youde (1979) 95 Cal.App.3d 161, 165.)

Licensure by the Medical Board of California is not readily granted. Qualification for licensure must be met (Business and Professions Code section 2080, et seq.) and minimum standards continuously met (Business and Professions Code section 2190, et seq.). The effect of state licensure is to assure the public that the person holding the license is qualified. This furthers the state's interest in public health, safety, moral and welfare. This, however, places a burden not merely on the state but also the practicing physician to responsibly conduct all his affairs. In this regard, it is Respondent who in the responsible conduct of his affairs furthers public confidence in licensure.

Character in the practice of medicine is as important a qualification as knowledge. (Hawker v. New York (1897) 170 U.S. 189, 196; Dent v. West Virginia (1888) 129 U.S. 114, 122; cf. DeRasmo v. Smith (1971) 15 Cal.App.3d 601, 605; Harrington v. Department of Real Estate (1989) 214 Cal.App.3d 394, 406.)

The key concern in arriving at a disciplinary recommendation is the degree to which the public needs protection from Respondent. (Mephram v. State Bar (1986) 42 Cal.3d 943, 948; In the Matter of Rodriguez (1993) 2 Cal. State Bar Ct. Rptr. 480, 501.)

In determining the appropriate degree of discipline to recommend, the Board's disciplinary standards serve as guidelines. (Cf. In the Matter of Taylor (1991) 1 Cal. State Bar Ct. Rptr. 563, 580; In re Young (1989) 49 Cal.3d 257, 267, fn. 1.) The Board, in the promulgation of disciplinary guidelines, has recommended an election between the maximum penalty of revocation or a minimum penalty reflecting discipline for a similar offense in California for the misconduct referenced in Finding No. VI.C (Business and Professions Code sections 2234(c)) and Finding Nos. VI.A - VI.B (Business and Professions Code section 2234(e)).

Consistent with the Board's guidelines, consideration of Respondent's basis for misconduct (Finding Nos. V - VI) must be balanced with factors relating to mitigation and rehabilitation (Finding Nos. VII - XII) to determine proper proportionality in the meting of discipline. (Cf. Taylor, supra; Snyder v. State Bar (1990) 49 Cal.3d 1302, 1310 - 1311.)

Respondent presented no evidence of rehabilitation relating to his moral character. It is abundantly clear that Respondent has the capacity and competency to practice medicine safely (Finding Nos. V - VI); it is, however, his character that remains at issue.

Although Complainant's counsel did not contend that revocation of Respondent's certificate is warranted, in exercising disciplinary authority, an Administrative Law Judge of the Medical Quality Hearing Panel is mandated to "take action that is calculated to aid in the rehabilitation of the licensee, or where, due to a lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence." (Business and Professions Code section 2229(b).) "Where rehabilitation and protection are inconsistent, protection shall be paramount." (Business and Professions Code section 2229(c).)

Respondent's efforts at rehabilitation (Finding Nos. VII and IX) are minimal, at best. Rehabilitation to protect the public mandates insight and efforts by Respondent relative to his moral character. Lacking any interest in financial matters (Finding No. VII) hardly functions to excuse or mitigate his responsibility as a physician and surgeon for overbilling. Repeated deceptions occasioned by both overbilling (Finding No. VI.A) and his conduct to the Customs officers (Finding No. VI.B) combined with his lack of attention to detail (Finding No. VI.C) and insight (Finding No. XIII) establish Respondent's need for rehabilitation should he seek to engage in practice in California.

Notwithstanding the recent efforts by Respondent toward his rehabilitation (Finding Nos. VII - IX), the risk posed by Respondent is not vitiated by his recent history (Finding Nos. V - VI) and present lack of full rehabilitation (Finding No. XIV). This risk must, therefore, be solely borne by Respondent (see Business and Professions Code section 2229(c)) and not, at this time, shared with the public.²

²Notwithstanding the determination that Respondent lacks sufficient moral character to practice medicine as a physician and surgeon in California, it is abundantly clear that with the continued support of his wife and his own efforts, he has the capacity to establish, over time, rehabilitation sufficient to compel reinstatement of his license. In this regard, Respondent is well advised to review, with his counsel, the provisions of the Business and Professions Code

Accordingly, giving due consideration to the facts underlying the Accusation (Finding Nos. V - VI), and the minimal evidence of mitigation, rehabilitation or extenuation (Finding No. VII - IX), balanced against the aggravating circumstances (Finding Nos. X - XIV) the public interest will be adversely affected by the continued issuance of a physician and surgeon's certificate and physician assistant supervisor license to Respondent.

ORDER

I

Physician and Surgeon Certificate No. G22600 issued to Respondent Ronald Melvyn Levy, M.D., is revoked pursuant to Determination of Issues Nos. I and IV.

II

Physician Assistant Supervisor License No. SA14698 issued to Respondent Ronald Melvyn Levy, M.D., is revoked pursuant to Determination of Issues Nos. II and IV.

Dated: March 20, 1996



JAIME RENÉ ROMAN

Administrative Law Judge
Medical Quality Hearing Panel
Office of Administrative Hearings

related to reinstatement.

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 JANA L. TUTON
Supervising Deputy Attorney General
3 ROBERT C. MILLER
Deputy Attorney General
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P. O. Box 944255
5 Sacramento, California 94244-2550
Telephone: (916) 324-5161
6
Attorneys for Complainant
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10
11 BEFORE THE
12 DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
13 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

14 In the Matter of the Accusation) CASE NO. 16-94-38976
Against:)
15)
RONALD MELVYN LEVY, M.D.) ACCUSATION
16 6325 Sheridan Drive)
Williamsville, New York 14221)
17 California Physician and)
Surgeon Certificate)
18 No. G22600)
Physician Assistant Supervisor)
19 License No. SA14698)
20 Respondent.)
21

22 Dixon Arnett, for causes for discipline, alleges:
23

24 1. Complainant Dixon Arnett makes and files this
25 accusation in his official capacity as Executive Director of the
26 Medical Board of California (hereinafter referred to as the
27 "Board").

1 2. On July 12, 1972, the Medical Board of California
2 issued physician and surgeon certificate number G22600 to Ronald
3 Melvyn Levy, M.D. The certificate will expire November 30, 1995,
4 unless renewed.

5 The Physician Assistant Examining Committee issued
6 physician assistant supervisor license number SA14698 was issued
7 to Ronald Melvyn Levy, M.D. The license will expire April 30,
8 1995, unless renewed.

9
10 3. Under Business and Professions Code section 2234,
11 the Division of Medical Quality shall take action against any
12 licensee who is charged with unprofessional conduct.

13 Under Business and Professions Code section 2305, the
14 revocation, suspension, or other discipline by another state of a
15 license or certificate to practice medicine issued by the state
16 shall constitute unprofessional conduct against such licensee in
17 this state.

18 Under Business and Professions Code section 118(b), the
19 expiration of a license shall not deprive the Board of
20 jurisdiction to proceed with a disciplinary action during the
21 time within which the license may be renewed, restored, or
22 reinstated.

23 Under Business and Professions Code section 2428, a
24 license which has expired may be renewed any time within five
25 years after expiration.

26 Under Business and Professions Code section 125.3, the
27 Medical Board of California may request the administrative law

1 judge to direct a licentiate found to have committed a violation
2 or violations of the licensing act to pay a sum not to exceed the
3 reasonable costs of the investigation and enforcement of the
4 case.

5 Under Business and Professions Code section 3527, the
6 Board may order the suspension or revocation of, or the
7 imposition of probationary conditions upon, an approval to
8 supervise a physician assistant for unprofessional conduct which
9 includes, but is not limited to, a violation of Chapter 7.7,
10 commencing with section 3500 of that code, a violation of the
11 Medical Practices Act, Chapter 5, commencing with section 2000 of
12 that code or a violation of the regulations adopted by the
13 Physician Assistant Examining Committee or the Board.

14
15 4. Respondent has subjected his physician and surgeon
16 certificate and physician assistant supervisor license to
17 discipline under Business and Professions Code section 2305 on
18 the grounds of unprofessional conduct in that on January 11,
19 1994, the State of New York, Board for Professional Medical
20 Conduct imposed discipline on respondent's license to practice
21 medicine in that state by censuring, reprimanding and fining
22 respondent \$30,000 for professional misconduct for fraud in the
23 practice of medicine, failing to maintain adequate records and
24 for willfully filing a false report. Attached as Exhibit A and
25 incorporated by reference is a true and correct copy of the
26 Administrative Review Board Determination and Order from the
27 State of New York.

1 WHEREFORE, complainant prays a hearing be had and that
2 the Medical Board of California make its order:

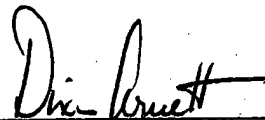
3 1. Revoking or suspending physician and surgeon
4 certificate number G22600, issued to Ronald Melvyn Levy, M.D.

5 2. Revoking, suspending or imposing probationary
6 conditions on physician assistant supervisor license number
7 SA14698, issued to Ronald Melvyn Levy, M.D.

8 3. Ordering Ronald Melvyn Levy, M.D., to pay to the
9 Medical Board of California its costs for investigation and
10 enforcement according to proof at the hearing, pursuant to
11 Business and Professions Code section 125.3.

12 4. Taking such other and further action as may be
13 deemed proper and appropriate.

14 DATED: December 19, 1994

15
16 

17 _____
18 DIXON ARNETT
19 Executive Director
20 Medical Board of California
21 Department of Consumer Affairs
22 State of California

23 Complainant
24

25 03573160-
26 SA94AD1588
27 (SM 11/2/94)

EXHIBIT A

STATE OF NEW YORK : DEPARTMENT OF HEALTH
ADMINISTRATIVE REVIEW BOARD FOR
PROFESSIONAL MEDICAL CONDUCT

-----X

IN THE MATTER	:	<u>ADMINISTRATIVE</u>
	:	<u>REVIEW BOARD</u>
OF	:	<u>DETERMINATION</u>
	:	<u>AND ORDER</u>
RONALD LEVY, M.D.	:	<u>ARB NO.93-161</u>

-----X

The Administrative Review Board for Professional Medical Conduct (Review Board), consisting of ROBERT M. BRIBER, MARYCLAIRE B. SHERWIN, WINSTON S. PRICE, M.D. and EDWARD C. SINNOTT, M.D.¹ held deliberations on December 10, 1993 to review the Professional Medical Conduct Hearing Committee's (Committee) October 8, 1993 Determination finding Dr. Ronald M. Levy guilty of professional misconduct. The Office of Professional Medical Conduct (Petitioner) requested the review through a Notice which the Review Board received on October 26, 1993. James F. Horan served as Administrative Officer to the Review Board. Michael A. Hiser, Esq. submitted a brief for the Petitioner on November 29, 1993. Jeffrey A. Lazroe submitted a reply brief on behalf of Dr. Levy on December 8, 1993.

¹. William A. Stewart, M.D. did not participate in the deliberations due to illness.

SCOPE OF REVIEW

New York Public Health Law (PHL) §230(10)(i), §230-c(1) and §230-c(4)(b) provide that the Review Board shall review:

- whether or not a hearing committee determination and penalty are consistent with the hearing committee's findings of fact and conclusions of law; and
- whether or not the penalty is appropriate and within the scope of penalties permitted by PHL §230-a.

Public Health Law §230-c(4)(b) permits the Review Board to remand a case to the Hearing Committee for further consideration.

Public Health Law §230-c(4)(c) provides that the Review Board's Determinations shall be based upon a majority concurrence of the Review Board.

HEARING COMMITTEE DETERMINATION

The Petitioner charged Dr. Levy with physical contact of a sexual nature; willful harassment, abuse or intimidation; moral unfitness; gross negligence; gross incompetence; negligence on more than one occasion; incompetence on more than one occasion; fraud in the practice of medicine; wilfully making a false report; and failing to maintain adequate records. The charges involved the care which the Respondent provided to four persons, Patients A through D.

The Hearing Committee sustained one charge of fraud, one charge of wilfully making or filing a false report and one charge of failing to maintain adequate records. The Committee found that the Respondent, a psychiatrist, committed fraud by billing for

twenty-one hours of therapeutic services for Patients A and B, which the Respondent did not provide. The Committee found that the Respondent was guilty of failing to maintain adequate records for failing to include a clear cut termination note in Patient C's file. The Hearing Committee found that the Respondent was guilty of wilfully filing a false report for statements which the Respondent made to United States Customs, when crossing the border into the United States from Canada with Patient C as a passenger in the car. The Hearing Committee did not sustain any of the other charges against the Respondent.

The Hearing Committee determined that the Respondent was a credible witness and found that Patient A was not a credible witness. The Committee found that the Respondent and his wife had been overindulgent and over-involved with Patient C and that the Respondent had displayed an obvious pattern of poor behavior. The Committee expressed concern that the Respondent's poor judgement could, if not corrected cross the line of acceptable medical conduct in the future. The Hearing Committee voted to censure and reprimand the Respondent for the three charges which they sustained and fined the Respondent Five Thousand (\$5000.00) Dollars for fraud in the practice of medicine.

REQUEST FOR REVIEW

The Petitioner has requested that the Review Board overturn the Determination of the Hearing Committee that the respondent was not guilty of moral unfitness in the practice of medicine and asks that the Review Board reinstate that charge.

The Petitioner argues that the Hearing Committee's determination that the Respondent was guilty of fraud in the practice of medicine and wilfully filing a false report also supports the charge that the Respondent was guilty of moral unfitness in the practice of medicine.

The Respondent urges the Review Board to sustain the Hearing Committee's Determination. The Respondent contends that the Hearing Committee assessed the credibility of the witnesses at the hearing and found no negligence, incompetence, violation of medical ethics or deviation from the acceptable standards of medical care.

REVIEW BOARD DETERMINATION

The Review Board has reviewed the entire record in this case and the briefs of the parties. The Review Board votes to sustain the Hearing Committee's Determination that the Respondent was guilty of one charge of fraud in the practice of medicine, one charge of failing to maintain adequate records and one charge of wilfully filing a false report. The Committee's Determination was consistent with their findings and conclusions, including their conclusion that the Respondent was a credible witness.

The Review Board votes to sustain the Hearing Committee's Determination to censure and reprimand the Respondent and to impose a fine upon the Respondent, but we modify the penalty to increase the fine against the Respondent for fraud and to impose a fine against the Respondent on the other two charges which the Hearing Committee sustained.

The Hearing Committee determined that the Respondent and his wife had overindulged and been overly involved with Patient C, and the Committee found that the Respondent had exercised poor judgement, which if not corrected, could ultimately cross the line of acceptable medical practice in the future. The Review Board finds that imposing a fine as a penalty for the Respondent's misconduct is appropriate. The Review Board concludes that the amount of the fine which the Hearing Committee imposed is not an appropriate penalty for deliberately billing patients for services not performed, for lying to Customs Officials and for failing to document the point at which he ended his treatment of the Patient C. The Hearing Committee's fine is not sufficient to serve as a deterrent to future misconduct by the Respondent.

Public Health Law Section 230-a provides that a penalty for misconduct can include a fine of up to Ten Thousand (\$10,000.00) Dollars for each count of misconduct. The Hearing Committee imposed a fine of Five Thousand (\$5,000.00) Dollars on the fraud charge and imposed no fine for wilfully filing a false report or failing to maintain adequate records. The Review Board votes to modify the Hearing Committee's Determination to impose a fine of Ten Thousand (\$10,000.00) for each count of misconduct which the Hearing Committee sustained. The Review Board finds that it is necessary to impose fines of this amount to impress upon the Respondent that the three incidents of misconduct were serious and that the Respondent must correct his pattern of poor judgement.

ORDER

NOW, based upon this Determination, the Review Board issues the following **ORDER**:

1. The Review Board sustains the Hearing Committee's October 8, 1993 Determination finding Dr. Ronald M. Levy guilty of professional misconduct.

2. The Review Board sustains the Hearing Committee's Determination to censure and reprimand Dr. Levy and to fine him, but modifies the amount of the fine.

3. The Review Board fines the Respondent Thirty Thousand (\$30,000.00) Dollars.

ROBERT M. BRIBER

MARYCLAIRE B. SHERWIN

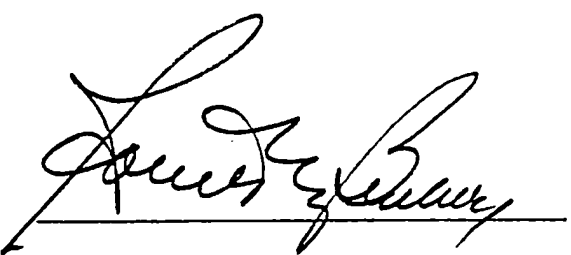
WINSTON S. PRICE

EDWARD C. SINNOTT

IN THE MATTER OF RONALD M. LEVY, M.D.

ROBERT M. BRIBER, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Levy.

January 11, 1994
DATED: Albany, New York


ROBERT M. BRIBER

IN THE MATTER OF RONALD M. LEVY, M.D.

MARYCLAIRE B. SHERWIN, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Levy.

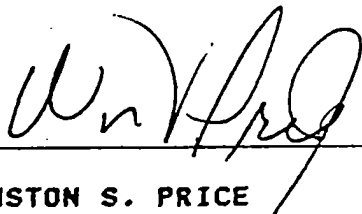
DATED: Albany, New York

Maryclaire B. Sherwin
MARYCLAIRE B. SHERWIN

IN THE MATTER OF RONALD M. LEVY, M.D.

WINSTON S. PRICE, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Levy.

DATED: Brooklyn, New York


WINSTON S. PRICE

IN THE MATTER OF RONALD M. LEVY, M.D.

EDWARD C. SINNOTT, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Levy.

DATED: Albany, New York

January 7, 1994

A handwritten signature in cursive script, appearing to read "Ed C. Sinnott", written over a horizontal line.

EDWARD C. SINNOTT, M.D.